

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U39 M), a California Corporation, and WILLIAM L. BRICKNER for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land in Alameda County Pursuant to the Public Utilities Code Section 851

Application 02-12-033
(Filed December 20, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING COMMENTS**

At the Prehearing Conference (PHC), I explored the possibility of the parties stipulating to the immediate conveyance of the subject property to Mr. Brickner (Brickner), reserving for later determination in this proceeding the allocation of any "gain-on-sale" proceeds to ratepayers, shareholders, or a combination thereof. This possibility seemed especially appropriate since Brickner indicated he has waited three years to acquire the property, Office of Ratepayer Advocates (ORA), does not object to the conveyance, and the gain-on-sale appears to be a modest \$20,000. At my request, the parties met following the PHC to explore this possibility, and they filed a report of their meeting.

While the parties indicate they did not reach an agreement for the immediate conveyance of the property, their report, in conjunction with the transcript from the PHC, suggested they are very close to agreeing on a procedure. The status report indicates, "'ORA would not oppose PG&E's request to have the ratemaking treatment of the sale deferred to a future generic gain on sale proceeding, if PG&E will agree on the record that the [Commission]

has jurisdiction to decide the ratemaking treatment of this sale.’” The report also indicates, “PG&E declined to join or agree to ORA’s statement, explaining that, because jurisdiction is established by law, ‘the jurisdiction question in this proceeding is a legal question to which parties cannot stipulate.’”

I now ask the parties to consider whether their disagreement is over jurisdiction or choice of law. With its petition, Pacific Gas and Electric Company appears to have invoked the Commission’s jurisdiction. At the PHC, I asked about question No. 8, from my initial list of questions, raising the issue of whether Federal Energy Regulatory Commission (FERC) ultimately would have to decide how gain-on-sale proceeds would be distributed. This exchange followed:

ALJ Thorson: No. 8, if I understand you right, Ms. [Chonda] Nwamu [PG&E attorney], is probably not at issue here because you’re not taking the position that this is really sent off to FREC. You’re taking the position that we [CPUC], at the end of the day, make the assignment here to the shareholders in your view.

Ms. Nwamu: Yes, your Honor.

ALJ Thorson: And, Mr. [Jason] Reiger [ORA attorney], you wouldn’t be arguing for No. 8 in any case.

Mr. Reiger: Correct.

Reporter’s Transcript of PHC 10:6-15 (February 20, 2002). As I read this exchange, the dispute is not whether the Commissioner or FERC will actually decide how the \$20,000 gain will be assigned by whether federal law (FERC) or state law California Public Utilities Commission (CPUC) will be applied in this proceeding to make that decision.

If the remaining dispute is indeed over choice of law, I suggest this procedure for the parties' consideration:

- a. The parties agree in writing to the bifurcation of the proceeding and the immediate conveyance of the property to Mr. Brickner. Upon receiving the signed agreement of the parties to this effect, I will prepare a proposed decision approving the conveyance and submit it to Commission for approval. Pending the completion of this proceeding, the "gain-on-sale" proceeds would be assigned to a memorandum account.
- b. We continue with the proceeding as scheduled. The choice of law and disposition of proceeds issues that are of interest to PG&E and ORA are well within the list of issues set forth in the Scoping Memo. My intent would be to reach decisions on these remaining issues unless I am otherwise directed by the assigned Commissioner or the Commission.

Therefore, **IT IS RULED** that the parties shall file and serve their written responses to this proposal on or before Tuesday, April 1, 2003.

Dated March 20, 2003, at San Francisco, California.

/s/ ANGELA K. MINKIN for

John Thorson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Comments on all parties of record in this proceeding or their attorneys of record.

Dated March 20, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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